No. 15657

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ENRIQUE MEDINA FERNANDEZ, GINAS JIMINEZ NORTES, VICTOR RODRIGUEZ, MANUEL FERNANDEZ RODRIGUEZ and AUGUSTIN CABRERA OROZA,

Appellants,

vs.

CHARLES C. HARTMAN, and ALBERT DEL GUERCIO,

Appellees.

APPEAL FROM
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION
HON. THURMOND CLARKE, PRESIDING

APPELLANTS' OPENING BRIEF

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LBERT DEL GUERCIO,

Appellees.

APPELLANTS' OPENING BRIEF

I.

STATEMENT OF THE PLEADINGS AND FACTS DISCLOSING JURISDICTION

Appellants are nationals of Spain, and seamen in the panish Navy.[1] On July 8, 1957, a Petition for a Writ of abeas Corpus and for Injunction (hereinafter sometimes eferred to as Petition) was filed in their behalf in the United

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/ See: Petition for Writ of Habeas Corpus, p. 1.

States District Court for the Southern District of California, Central Division, under 28 U. S. C. A. §2241 (c) (3) & (4). (See Petition, Clk. T. 2.) [2]

Said Petition sought appellants' discharge from the custody of respondent CHARLES C. HARTMAN, Commandant of the Eleventh Naval Base, at San Diego, California, and asked that pending hearing on the Petition, he and his subordinates be enjoined from delivering appellants over to Spanish Naval officers for return to Spain as deserters; and further, for an Order to Show Cause why such Petition should not be granted, and the appellants be discharged from his custody (See: Petition, p. 3; Clk. T. 2).

Custody of appellants was transferred to, and is now in, respondent ALBERT DEL GUERCIO, District Director of Immigration and Naturalization Service, at Los Angeles,

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[2] On August 13, 1957, this Court made its order permitting the parties hereto to proceed upon a typewritten record and briefs, and authorizing consideration of the record in its original form.

That record is not available to us here as we prepare this brief, although we do have a copy of the certification of the record by the Clerk of the District Court which contains an index to the Record. Such index, however, refers only to the beginning page of the Record at which cited document is to be found. Accordingly, all references to the pleadings and other documents will be made in this brief by express reference to the particular document cited, and its own page number, and also to the page reference of the Clerk's Transcript as given by the aforementioned index.

Clk. T. refers to the Clerk's Transcript of the Record.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

California, pursuant to a minute order of said District Court entered on July 16, 1957 (Clk. T. 23).

On August 1, the District Court entered its Order denying the Petition, dissolving the restraining order, discharging the Order to Show Cause, and directing the delivery of appellants "forthwith" to their respective ships (Order of District Court, dated August 1, 1957, p. 2; Clk. T. 39).

Notice of appeal from said Order was filed August 1, 1957 (Clk. T. 41); and on the same day, the District Court granted a stay of execution for ten days, "pursuant to Rule 27 (1)" (Order Pursuant to Rule 27 (1)).

On August 13, 1957, this Court granted a stay of execution of said judgment pending appeal. Jurisdiction to entertain this appeal is conferred upon this Court by 28 U. S. C. A. §2253.

II.

STATUTES AND TREATIES INVOLVED

The construction and applicability of two treaties between the United States and Spain are at issue.

The respondents rely upon Article XXIV of the TREATY OF 1902 BETWEEN THE UNITED STATES AND SPAIN OF FRIENDSHIP AND GENERAL RELATIONS

33 Stat. 2105, at pp. 2117-2118),[3] as support for their position and for the judgment of the trial court.

Article XXIV of said Treaty provides as follows:

> "The Consuls-General, Consuls, Vice-Consuls and Consular-Agents, of the two countries may respectively cause to be arrested and sent on board or cause to be returned to their own country, such officers, seamen or other persons forming part of the crew of ships of war or merchant vessels of their Nation, who may have deserted in one of the ports of the other.
>
> To this end they shall respectively address the competent national or local authorities in writing, and make request for the return of the deserter and furnish evidence by exhibiting the register, crew list or other official documents of the vessel, or copy or extract therefrom, duly certified, that the persons claimed belonged to said ship's company.
>
> On such application being made, all assistance shall be furnished for the pursuit and arrest of such deserters, who shall even be detained and guarded in the gaols of the country

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[3] Hereinafter sometimes referred to for convenience as the 1902 Treaty.

pursuant to the requisition and at the expense of the Consuls-General, Consuls, Vice-Consuls or Consular-Agents, until they find an opportunity to send the deserters home.

If, however, no such opportunity shall be had for the space of three months from the day of the arrest, the deserters shall be set at liberty, and shall not again be arrested for the same cause. It is understood that persons who are citizens or subjects of the country within which the demand is made shall be exempted from the provisions of this article.

If the deserter shall have committed any crime or offense in the country within which he is found, he shall not be placed at the disposal of the Consul until after the proper Tribunal having jurisdiction in the case shall have pronounced sentence and such sentence shall have been executed."

Appellants interpose Article III of the EXTRADITION TREATY OF 1904 BETWEEN SPAIN AND THE UNITED STATES, With Protocol of 1907, PROCLAIMED IN 1908 (35 Stat. 1947, 1950, 1955), [4] as precluding their return

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[4] Hereinafter referred to for convenience as The Extradition Treaty.

parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as a admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

III.

STATEMENT OF THE CASE

A. SUMMARY OF THE FACTS

Appellant MANUEL FERNANDEZ RODRIGUEZ [7/] is a young (22 years old) Spanish seaman who was a member of the

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[7/] By stipulation, the testimony of Manuel Rodriguez is deemed the testimony of the other appellants: (R. 41, 42). However, two other appellants testified briefly, and where their statements are believed relevant and useful, reference to them will be made in an appropriate footnote.

crew of the Spanish destroyer, ALMIRANTE FERRANDIZ (R. 7). [8]

In his household in Spain, Manuel had learned something of freedom, but the price had been heavy. Two of his brothers had been killed fighting for the Loyalist cause during the Civil War, while a third was forced into exile, and now lives in Chile (R. 16). [9]

As a young boy, after the war, Manuel, and his family, had been compelled to witness the execution of Loyalists and their sympathizers, for those who failed to do so were "called 'Reds' and they were beaten and ... at times killed", (R. 22).

After the war, the only political party permitted in Spain was, and still is, the Falange.[10] Membership in the Falange was made virtually a pre-requisite for those seeking higher education (R. 45-48), or even a decent job (R. 19-21, 46). Without Falangist connections, one was able to obtain only the most arduous labor, and that at reduced wages (R. 19-20, 54). Criticism of conditions could lead to losing one's job (R. 54) or punishment infinitely worse (R. 49, 55). Moreover, the

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[8] R. refers to the Reporter's Transcript of the oral proceedings had in the District Court below. The number refers to the page on which the reference may be found.

[9] Ginas Jiminez Nortes (suing as Ginas Jiminez Martinez) testified that his father and uncle had been jailed several times during the war because of their refusal to take up arms for Franco (R. 48).

[10] See appendix "A" - J.

workingman had no union to protect him, save that which "cooperated" with Franco (R. 20, 21).

And so, at fourteen, Manuel joined the Falange (R. 18).[11/] But a year later he quit the Party because he could no longer suffer its principles, and because "they were the ones who killed my brothers" (R. 18). When he stopped attending Falangist classes, he was fired from his job (R. 19).[12/] After that, he could only find menial jobs at low wages.

In about 1955, Manuel entered the naval service (R. 28).[13/] Early this year, he was assigned to a crew that was being sent to San Francisco, California, for the purpose of taking custody of two destroyers which our government was giving to Spain (R. 37; see also Respondent's Exhibits A and

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[11/] So did appellant Nortes, for similar reasons (R. 46, 47). Joining the Falange meant wearing a uniform, attending special Falangist classes, and taking an oath to support - not the government - but Franco (R. 20, 46, 47).

[12/] Nortes testified that he suffered the same fate, and also encountered difficulties at the University when he was made to repeat classes on that account.

[13/] Nortes stated that he joined the Navy with the idea of deserting in a free country, because there was no future in Spain for those who "want to get married and have children" (R. 53).

Appellant Enrique Medina Fernandez testified that he entered the Navy because he could not support his sisters and parents any other way (R. 62)

B). At that point, MANUEL vowed to somehow utilize this opportunity to escape from Spain (R. 32).

En route to San Francisco, he made an abortive attempt to desert in Panama, which country he believed had not recognized Franco Spain (R. 39). Unable to find other members of the crew who had deserted before him, he abandoned that effort, and returned to the ship (R. 39).

Thus, on March 17, 1957, MANUEL, and the other appellants, arrived with the crew in San Francisco (R. 30, 63), and began training with the United States Navy for the purpose of learning how to use the destroyers (R. 52). During this period, MANUEL was given several shore leaves of extended duration, but he made no effort to escape then (R. 38), probably in the hope that a more favorable opportunity would present itself (R. 32). [14]

Such an opportunity came in June, when the training of the ships' crew shifted to San Diego (R. 28). There, on

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[14] Nortes testified on cross examination:

> "I had several opportunities in San Francisco, but since my intention was to go into --- was to desert in Mexico, I did not want to take the opportunities there", (R. 53).

Appellant Fernandez was granted short leave about fifteen times, but made no attempt to desert in the United States, (R. 57)

June 4, MANUEL and a shipmate, the appellant, OROZA, were granted a four hour shore leave, commencing at 6:00 P. M. and terminating at 11:00 P. M. (R. 29). Upon leaving the ship, they proceeded at once for Mexico, and crossed the border into Tijuana, Baja California, at approximately 8:30 P. M., the same evening (R. 8). 15/ Fifteen days later, the two boys surrendered to the local Mexican police, and asked for political asylum (R. 9, 44). It may be assumed that the other three appellants did likewise. 16/

But appellants were far from free; their troubles had only begun. While in the custody of Mexican authorities, appellants were paid a visit by the Captain of the ALMIRANTE FERRANDIZ, and by a petty officer of the United States Navy,

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15/ Appellants Fernandez and Nortes were given shore leave commencing at 6:00 P. M., June 21, and terminating at 1:00 A. M., June 22; and on June 16, Victor Rodriguez was granted shore leave commencing at 9:00 P. M. that date, and terminating at 7:00 A. M. the following morning (See: Answer, para. II (7), at p. 3, Clk. Tr. 24). The evidence is uncontroverted that each appellant entered Mexico before his shore leave had expired (R. 44, 56).

16/ See stipulation of counsel whereby Manuel's testimony is deemed that of the others (R. 41, 42). See also, testimony of appellant Fernandez (R. 61), and of appellant Nortes (R. 50).

who accompanied him (R. 91, 92).[17/] The Captain asked appellants to return to their ships voluntarily, holding out the promise of reward if they did so (R. 14).[18/] Appellants refused (R. 15). For they feared that return to Spain meant a long term in prison - and possibly death (R. 24, 55, 62).[19/]

On July 5, 1957, appellants were paroled into the United States by order of respondent DEL GUERCIO, who was purporting to act under the provisions of §212(d)(5) of the Immigration and Nationality Act (8 U. S. C. A. §1182 (d)(5)); and thereupon, they were delivered into the custody of the respondent HARTMAN for return to their respective ships (See: Order of Parole, Plaintiff's Exhibit #1).[20/]

[17/] As a "guide", according to the government, presumably because there are no diplomatic relations between Spain and Mexico (See: Answer to Amendment to Petition For Writ of Habeas Corpus, para. II (4), at p. 2, line 17 (Clk. T. 24).

[18/] Forgiveness and a fifteen day shore leave in San Diego, according to Manuel's testimony.

[19/] It would appear that while in Mexico, appellants had publicly criticized the Franco regime, and these comments had been published in the Mexican press (See: R. 23, 61). This led Fernandez to express the --

> " ... fear that they would put us in jail or that they would kill us because of having spoken against the government" (R. 62).

That such fear was not groundless, see Appendix "A" - E.

[20/] The Order of Parole recites that appellants made application for admission into the United States. On the reverse side of the Order appears the signature of appellant Enrique Medina Fernandez, acknowledging that he has read

(Continued)

On July 8, 1957, the United States District Judge, HON. THURMOND C. CLARKE, issued his Order directing respondent HARTMAN to show cause why the petition for Writ of Habeas Corpus should not be granted and the appellants discharged from his custody, and further ordering that said respondent and his subordinates be enjoined, pending hearing on the Petition, from delivering appellants to their ships, or removing them from the Court's jurisdiction (See: Order to Show Cause and Restraining Order; Clk. Tr. 6).

The hearing upon the Order to Show Cause and the Petition was held on July 19 and 23, 1957, concluding on the latter date with argument by Counsel (See: R. 172, 96-170). At the commencement of the proceedings, Mr. Philip Newman, an attorney, representing the government of

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20/ (Continued:) and understands the conditions of parole, and, inter alia, agreeing to abide by its terms. Fernandez testified, however, that he did not know what he was being asked to sign, that he neither read nor understood English, and that he had made no request or application for return to the United States (R. 59-60).

No application for admission as such was offered by the government; and as a matter of fact, the appellants denied having made any, and insisted that their return to the United States was involuntary and against their will (R. 24, 59, 60).

None of this evidence was controverted or challenged by the government.

Mexico, appeared before the Court, and informed the Court that Mexico considered appellants "as people who could qualify as political refugees", and that upon their application at any port of entry, "the Mexican government will admit these five subjects as political refugees" (R. 4).

Thereafter, on August 1, 1957, the District Court made its Order adverse to appellants as aforedescribed, and this appeal followed.

B.

QUESTIONS INVOLVED

The respondents take the position that they are acting under the provisions of Article XXIV of the 1902 Treaty with Spain, and that by its terms, they are under a duty to seize and detain seamen from Spanish warships who desert in our ports, and return them to their superiors upon demand; [21] that appellants fell within this category, and that irrespective of any impropriety in their seizure or arrest, the Treaty affords a legal basis for their detention (See: Respondents' Answer and Return; also, argument of U. S. Attorney, at R. 133-149, 165-170).

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[21] It should be noted that demand in the form prescribed by the 1902 Treaty was not made until July 12, some four days after the Order to Show Cause and Restraining Order had been issued (See: Respondent's Exhibits "C", "D", "E", & "F"). Moreover, it is doubtful that a valid demand was made even then, for the Spanish Consul submitted the crew list required by Article XXIV to the trial judge, rather than to a "competent officer, " i. e. an official of the executive branch of government (See: Exhibit F; R. 73-85)

respondents had the authority or duty to apprehend appellants for delivery to their ships is wholly without support in the evidence, and is contrary to law.

3. The Order of the District Court, dated August 1, 1957 (Clk. Tr. 39) denying appellants' petition for Writ of Habeas Corpus and for Injunction, Dissolving the Restraining Order, discharging the Order to Show Cause, and directing their return to their respective ships, is wholly unsupported by the evidence, and is manifestly contrary to law, for the following reasons:

a) The Court failed and refused to find that appellants had committed offense of a political character;

b) The Court failed and refused to conclude that the Extradition Treaty of 1904 with Spain was applicable, and barred appellants' surrender to the Spanish authorities;

c) The Court failed and refused to find and conclude that respondents had no jurisdiction over appellants in that they were not within the United States, and amenable for such delivery to Spanish authorities.

d) The Court failed and refused to find and conclude that respondents lacked authority to seize and detain appellants from the territory of a foreign country.

e) The Court failed and refused to find that the 1902 Treaty was inapplicable to the case at bar for failure of the Spanish authorities to comply therewith.

"... for the pursuit and arrest of such deserters ...", and for their detention. "Such deserters" refers to "seamen ... forming part of the crew of ships of war ... of their nation, who may have deserted in one of the ports of the other."

The applicability of Article XXIV, therefore, and hence, the authority for seizing and detaining appellants, turns upon whether or not they deserted "in one of the ports of the (United States)."

It is submitted that the phrase just cited should be construed literally, and we believe there is a sound historical and legal basis for such approach.

In August, 1901, six Spanish seamen deserted their ships in New Orleans, Louisiana. Local authorities refused to aid the Spanish master in their capture. As a result of this incident, the Minister Plenipotentiary of Spain, the Duke de Arcos, protested to the then Secretary of State, Mr. Hay, in a note dated September 25, 1901, containing the following pertinent language:

> "The Consul appeared before the competent authorities asking their aid in arresting the sailor deserters, as customary in all ports; but the said authorities refused to grant the request of the Consul, on the ground that there was no existing treaty between Spain and the United States that

qualifications thereto. Had the parties intended that desertion from the military service - as well as desertion from the ship - was to be made subject to the provisions of Article XXIV, they would have expressly so stated, as they did in the original draft of Article III of the Extradition Treaty of 1902 (and subsequently discarded in the Protocol of 1907).[21-a] While it is quite likely that Spain regards the appellants as military deserters, neither these courts nor the respondents could be called upon - under Article XXIV - to enforce what is in reality the law of a foreign government.

Tucker v. Alexandroff, 183 U.S. 424, 433, 434.

The offense of desertion is variously defined as:

1. " ... a soldier or sailor who absents himself without leave with the intention of not returning."

The Encyclopedia Americana (1954, N.Y.), p. 8

2. "To prove the offense of desertion, it is necessary to show absence without leave and the intent not to return."

The New International Encyclopedia (U.S., 1924), pp. 713-714.

3. "The abandonment, by a sailor, of a vessel in which he had engaged to perform a voyage before the expiration of his time, and without leave."

[21-a] See underscored portions of that Article, page 19, supra.

Bouvier's Law Dictionary
(Rowles, 3d Ed., 1914), p. 855.

4. "By desertion, in the maritime law, is meant not a mere unauthorized absence from the ship without leave, but an unauthorized absence from the ship, with an intent not to return to her service ..."

Black's Law Dictionary, (4th Ed.).

5. "... a deserter is one who is absent without leave and with a manifest intention not to return ..."

Reed v. United States, 252 Fed. 21

6. "The crime of desertion requires two elements: (1) absence without authority, and (2) intent to remain away permanently."

Griffen v. United States, 115 Fed. Supp. 509
(Rev'd on other grounds, 216 Fed. 2d 217).

7. "A quitting the ship and her service, not only without leave and against the duty of the party, but with an intent not again to return to the ship's duty."

Quoted with approval in Winthrop's
Military Law and Precedents (2d Ed. 1920),
FN. 24, at p. 637.

8. "(a) Any member of the armed forces of the United States who -

(1) Without proper authority goes or remains absent from his place of service, organization, or place of duty with intent to remain away therefrom permanently ..."

Uniform Code of Military Justice,
50 U. S. C. A. §679 (Art. 85).

It will be seen from these diverse authorities that the offense of desertion requires the presence of two elements, to wit: 1) absence from an assigned station, ship or duty without authority, and 2) an intent to remain away permanently. Unless both of these elements are present, there is no desertion.

In the case at bar, the question is not so much whether desertion occurred as it is when and where. Respondents admit that each appellant had shore leave of four or more hours (Answer, Para II (7), p. 3; Clk. Tr. 24). The evidence is overwhelming and unrefuted that each appellant crossed the border into Mexico before his leave expired (See p. 11, supra). Even if we assume that each appellant left his ship with the intent to desert in Mexico - an assumption not unwarranted by the evidence - the offense of desertion could not have occurred until the expiration of their respective shore leaves; in other words, in Mexico. By definition, desertion requires an overt act as well as the intention to commit it. 21-b/ Thus according to Winthrop's Military Law and Precedents

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21-b/ "[The rules of law], whether civil or even criminal, never inflict penalties upon mere internal feeling, when it has produced no result in external conduct." (Kenny, Outlines of Criminal Law [15th Ed., Camb., 1936], p. 40).

B.

EVEN IF THE APPELLANTS DID DESERT, THEIR OFFENSE UPON THE FACTS AT BAR WAS OF A POLITICAL NATURE, AND THEREFORE, UNDER THE EXTRADITION TREATY OF 1904, IS NON-EXTRADICTABLE.

1.

THE ISSUE

As exemplified by the case of these five appellants, the struggle for liberty is not confined to countries behind the "iron curtain". Nor, unfortunately, is freedom necessarily guaranteed to those whose rulers claim our friendship. We, of course, are not here to pass judgment upon governments, or the institutions by which they rule, but rather to determine the fate of a few men who dare to love freedom enough to risk their lives in search of it. It is natural enough that we examine into the sincerity of its pursuers; yet, liberty is not a right to be enjoyed only by those who pursue it with clean hands. The nature of despotism forbids such a narrow view.

Though appellants stressed the political character of their offense, and urged the Extradition Treaty of 1904 as a bar to their detention and surrender to Spain, the trial court's order fails even to note the claim. In this defect, and in the conclusion that respondents have jurisdiction over the offense at bar, the Court's order is in error.

2.

THE EXTRADITION TREATY IS APPLICABLE TO THE CASE AT BAR

Once the sovereign has agreed to delimit its power by treaty, the scope of that power, and the manner in which it is exercised is defined by the terms prescribed in such treaty.

> Valentine v. United States, 299 U. S. 5, 9.
>
> Cook v. United States, 288 U. S. 102.
>
> United States v. Ferris, 19 Fed. 2d 925.
>
> Karadzole v. Artukovic, (CCA 9), Case No. 15217, June 24, 1957 (Unreported)

> "A power to seize for the infraction of a law is derived from the sovereign, and must be exercised, it would seem, within those limits which circumscribe the sovereign power . . . " (Rose v. Himley, 4 Cranch 241, 279.)

Since the power of respondents to seize appellants as deserters, and deliver them to their ships, is derived from a treaty, it is thereby subject to such limitations as the treaty signatories may put upon it. Those limitations, however, need not be in the treaty granting the power, but may be contained elsewhere (cf. Johnson v. Browne, 205 U. S. 309, 320). Thus, the authority conferred by Article XXIV of the 1902 Treaty has been circumscribed by a Congressional statute (§16 of the Act of March 4, 1915, 38 Stat. 1164, 1184).

[illegible]

[illegible]
[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Moreover, we submit that Article XXIV is further delimited by the terms of Article III of the more recent Extradition Treaty of 1904. [22/]

The crucial language of Article III is to be found in the phrase:

> "The provisions of this Convention shall not <u>import</u> claim of extradition for any crime or offence <u>of a political character</u>, nor for acts connected with such crimes or offences . . . "

"The provisions of this Convention" enumerate a long list of extradictable crimes, and prescribe the manner by which such extradition shall be effected. Yet, in Article III, the term "import" is used, as if to acknowledge the existence of a tradition or policy [23/] whereby political asylum is afforded as a matter of course. But if the context of the term is enlarged to include the words "shall not import claim of extradition," its sense is likewise magnified, so as to incorporate a broader definition, e. g.: "to bear or carry with it . . . " (Webster's Collegiate Dictionary, 5th Ed.; see also

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[22/] The provisions of which have been set forth at p. supra.

[23/] Import in this sense is defined in The Oxford Universal Dictionary, 3 Ed., Revised with Addenda, as:
"5. to involve; to imply 1529; to convey in its meaning; to signify, denote 1533; to bear as its purport; to express, state, make known . . . "

The Oxford Universal Dictionary, supra, Footnote 23.) By substituting this definition for the word "import", Article III might read:

> "The provisions of this Convention shall
> not carry with it [any] claim of extradition
> [for political offences] . . . "

It is evident, then, that the manifest objective and meaning of Article III is to authorize extradition only of persons accused of ordinary crimes, it being understood between the parties that political offenses are not extraditable.

While it is true that Article III employs the term "extradition", that fact does not put appellants beyond its reach. Extradition means simply to surrender an accused to the demanding power (See: Black's Law Dictionary, 3rd Ed). But as we have pointed out, Article III expresses a criterion of general conduct and relations between the parties, rather than being limited in its operation and effect to the twenty-two ordinary crimes enumerated in Article II of the Convention. Actually, the only significant difference between Article XXIV of the 1902 Treaty, and the Extradition Treaty is the procedure by which the surrender is to be accomplished. Article XXIV calls for a summary procedure because time is of the essence. Yet, the result is virtually the same; the offender is delivered to the demanding sovereign.

It remains, therefore, only to consider whether

appellants' desertion is an offense of a political character. If so, their detention is unlawful.

3.

APPELLANTS' DESERTION WAS AN ACT OF A POLITICAL CHARACTER

As one writer soberly observed:

> "In an age when one party only is permitted in a State, perhaps the only remaining method of active political protest may lie in withdrawing from that State and living elsewhere." 24/

His point aptly suggests the difficulties inherent in attempting a definition of offenses of a political nature. None could possibly satisfy all of the acts which oppression justifies, or which humanitarianism condones. A chance remark, the purchase of black market coffee, possession of a short-wave radio -- simple items which we take for granted -- may give impetus for flight elsewhere. In weighing the political character of the escape of seven Polish sailors to England, Lord Goddard, C. I., stated:

> ". . . it is necessary, if only for reasons of humanity, to give a wider and more generous meaning to the words we are now

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24/ Denny, An Offense Of a Political Character, 18 Modern Law Review 380, 384.

construing . . . " 25/

Historically, the United States has treated flight from oppression as a political act, with the result that we have been enriched by the contributions of such political refugees as Toscanini, Sikorsky, Undset, Waksman, Robert Wagner, Sr., Rachmaninoff, Shurz, Pulitzer, Stravinsky, Lotte Lehman, Einstein and Frankfurter.

Our humanitarian policy toward political refugees is frequently reflected in our statutes, 26/ and only recently, led to the acceptance by the United States of more than 31,000 Hungarian refugees, twenty percent of all those who escaped Communist oppression in their homeland. 27/

But flight from rebellion and civil strife is not necessarily the earmark of a political refugee. (Compare, for example, the plight of the Jews in Nazi Germany.) Rather, the United States accepts the view that they "are persons who

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25/ Ex Parte Kolczynski, 1954, 2 Weekly Law Reports 116 (1955); 1 All. E. R. 31; quoted with approval by this Court in Karadzole v. Artukovic (CCA 9), No. 15,217, decided June 24, 1957 (unreported).

26/ See: Refugee Relief Act of 1953, 67 Stat. 400 (50 App. §1971), as amended by Act of August 31, 1954, 68 Stat. 1044. Compare also: §243(h) of the Immigration and Nationality Act (8 U. S. C. A. §1253(h)).

27/ The Department of State Bulletin (May 6, 1957), Vol. 36, No. 932, at p. 721.

fear return to their countries of origin," 28/ and has accordingly announced :

> "The United States is firmly opposed to forced repatriation in any form whether by direct steps or indirect steps which might tend to accomplish this." 29/

On the fifth anniversary of the United States' Escapee Program, Robert S. McCollum, head of the Office of Refugee and Migration Affairs (State Department), warned:

> ". . . as long as oppressive dictatorships exist, as long as basic individual freedoms are denied, there will be people who flee to seek better lives and thereby create new refugee problems . . .
>
> "Pleased as we may be about our Country's part in accepting Hungarian escapees,

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28/ Speech by Jacob Blaustein, United States Representative to the General Assembly, delivered in Committee relating to the Report of the High Commissioner For Refugees. Bulletin, op. cit. Vol. 33, p. 628, at p. 631. In approving the definition of political refugee established by the United Nations Mandate, Mr. Blaustein stated:

> "These refugees are people who had to leave their own countries of residence through no fault of their own, but because of war, revolution, and oppression -- conditions beyond their control."

ibid, at p. 628.

29/ Blaustein, op. cit. p. 634.

who achieved, and still holds, his power by force and violence; that there is religious and political persecution in Spain; that the Spanish press is completely controlled by Franco, and political dissent is ruthlessly suppressed; that only one political party, The Falange, is permitted to exist, and this organization dominates the whole political and economic life of the nation; and that there are persons who have been promised amnesty by Franco, only to be executed upon their return to Spain. [33]

This, then is why MANUEL RODRIGUEZ --

> " . . . was fleeing the Franco regime." (R. 15);

why GINAS JIMINEZ NORTES --

> " . . . was looking for a country where I could be free and I could do whatever my capacity and my reasoning decided for me" (R. 45);

and why ENRIQUE FERNANDEZ had --

> "A fear that they would put us in jail or that they would kill us because of having spoken against the government" (R. 62).

It is difficult to conceive of a more purely political act than flight from Franco tyranny. [34] That it may be

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[33] See Appendix "A", containing a digest of leading periodical and newspaper articles describing the political events which give support to this portrayal of Spain.

[34] Mexico regards appellants as political refugees, and is willing to accept them as such (R. 4). (Continued)

characterized by the demanding State as a statutory crime is to be expected. In the Kolczynski case (supra, fn. 25), the theft of a ship, and the wounding of an officer, by seven Polish sailors escaping to England were treated as political crimes, and hence, non-extraditable. Karadzole v. Artukovic (CCA 9), No. 15,217 (unreported) (June 24, 1957), involved a Yugoslav accused of war atrocities by his government; yet, this Court held genocide a political act which barred his repatriation.

There is no sound reason, therefore, why desertion from a ship, when prompted by bona fide political motives, cannot be regarded as a political offense. Indeed, the United States has extended assylum to deserters. Thus, in 1955, the State Department rejected a demand by Czechoslovakia for the return of a border guard who had fled into the American zone "for political reasons". 35/

34/ (Continued) And, according to one source, France has admitted over 200,000 Spanish refugees on political grounds. Weis, The International Protection of Refugees, 48 Am. J., Int'l Law 193 (1954).

See also: United States ex rel Watts v. Shaughnessy (D. C., S. D., N. Y.) 107 Fed. Supp. 613, where Judge Irving Kaufman stayed the deportation of an alien to Spain on grounds that he might be persecuted there.

35/ In its note, the State Department declared that it would not violate its traditional practice of refusing to return to a foreign jurisdiction persons who have left it for political reasons.

> "Under a system of political oppression denying its citizens the right to choose freedom, violence and tragedy are bound to occur."

Bulletin, op. cit. Vol. 32, pp. 736-737 (dated May 2, 1955).

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Again, in 1956, the United States extended political sanctuary to six Russian seamen who had deserted their ships in Formosa. 36/

It has even been our policy during, and since, World War II, to refuse, out of justice and decency, to repatriate enemy deserters. 37/ Indeed, it is common knowledge that our government encourages those who chafe under totalitarian systems to desert their fate at their earliest opportunity; and large rewards have been offered to, and citizenship conferred upon, refugees who escape with military equipment. 38/

As appellant Nortes put it so eloquently:

> "I wasn't thinking of deserting. I was thinking of leaving the Franco regime and go to a free country where a man could use his freedom." (R. 50).

Manifestly, appellants' desertion was an offense of a political character, and consequently, the respondents are without authority or jurisdiction to return them to their ships.

See: Karadzols v. Artukovic, supra.

36/ See: "The Episode of the Russian Seamen", Report of the Sub-Committee of the Judiciary to Investigate the Administration of the Internal Security Act and other Internal Security Laws (May 24, 1956), 84th Cong., 2nd Session.

37/ Garcia-Mora, International Law and Asylum as a Human Right, (Public Affairs Press, 1956), p. 105.

38/ New York Times, August 5, September 21-22, 1953.

C.

ASSUMING THE APPLICABILITY OTHERWISE OF THE 1902 TREATY, RESPONDENTS ARE WITHOUT JURISDICTION TO DELIVER APPELLANTS TO THEIR SHIPS.

1.

RESPONDENTS DID NOT ACQUIRE JURISDICTION OVER APPELLANTS WHEN THEY PAROLED THEM INTO THE UNITED STATES FOR THE PURPOSE OF DELIVERY TO THE SPANISH AUTHORITIES SINCE SUCH PURPOSE WAS PROHIBITED BY LAW.

The District Court ordered the delivery of appellants to their ships, presumably pursuant to the 1902 Treaty.[39] Such Order was error because the Court had no jurisdiction to make it, and the respondents are without authority to comply with it.

The evidence shows that appellants were paroled into the United States from Mexico pursuant to §212(d)(5) of the Immigration and Nationality Act (8 U. S. C. A. §1282(d)(5)).[40]

That statute empowers the Attorney General in his discretion to parole into the United States for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission. The statute expressly

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[39] See: Order Denying Petition, etc. (Clk. T. 39).

[40] Petitioners' Exhibit 1. The statutory provisions are set forth in full at pp. 6-7, *supra*.

provides, however, that such parole shall not constitute an admission into the United States, and that when the purposes of the parole have been served, "The alien shall forthwith return or be returned to the custody from which he was paroled . . . "

It is apparent that the Attorney General has the discretion to determine whether the statutory grounds for parole are met by the applicant. It is also true that the Attorney General may delegate this authority to his subordinates, although obviously the latter cannot exceed the powers which have been conferred upon him by Congress. In the case at bar, Respondent Del Guercio has exercised a power which he claims was granted to his superior, the Attorney General. This assertion requires examination.

Whatever discretionary power §212(d)(5) of the Immigration Act confers upon the Attorney General, recent United States Supreme Court decisions involving aliens under his supervision and control make it clear that such discretion must be exercised within the confines of Congressional intent.

> United States v. Witkovich, 353 U.S. 194, 1 L.Ed.2d 765.
>
> Barton v. Sentner, 353 U.S. 963, 1 L.Ed.2d 901, aff'm'g. 145 Fed. Supp. 569.
>
> See also: United States v. Zucca, 351 U.S. 91.

The legislative history of §212(d)(5) reveals -- if the statutory language does not -- that the sort of "emergent

reasons" or "public interest" which Congress had in mind were those which could be satisfied or performed wholly within the territorial limits of the United States. [41]

This view is buttressed by the express legislative mandate requiring the alien "be returned to the custody from which he was paroled . . . ". In fact, this is one of the terms and conditions of the Parole Order. [42]

Once, of course, the Attorney General loses control or custody of the alien, he is unable to comply with Congress' command. Manifestly, this is bound to be the result if appellants are surrendered to Spanish jurisdiction.

It was never contemplated by Congress that §212(d)(5) should serve the interests of a foreign power; but it is quite apparent from the terms and conditions of the Parole Order (line (h), p. 2), that Respondent Del Guercio had precisely that intention when he paroled appellants into the United States. Moreover, the Order of the District Court purports to carry out this purpose, and to compel performance of an act which patently transgresses the legislative scheme of the Statute.

Since the delivery of appellants cannot be accomplished

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[41] U. S. Code Congressional and Administrative News (1952), Vol. 2, at p. 1706. For example, where an alien requires immediate medical attention before inspection can be made; or where the alien is desired as a witness for prosecution.

[42] See Petitioners' Exhibit 1, line (b).

[illegible]

[illegible]

without doing violence to the statute under which respondents purport to act, a Writ of Habeas Corpus will lie, even though appellants' detention may be otherwise valid.

United States v. Curran, 16 Fed. 2d 958, 960 (and cases cited thereat).

In fact, the absence of a lawful basis for paroling appellants into the United States constitutes a fatal jurisdictional defect which renders the seizure and detention of appellants void ab initio. [43]

See: Mahler v. Eby, 265 U. S. 32.

See also: United States v. Zucca, supra.

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[43] A condition precedent to the issuance of an order of parole is an application for admission. (§212(d)(5) of Immigration Act; 8 U. S. C. A. §1182(d)(5)). The failure to make such an application would vitiate the Order of Parole ab initio (United States v. Zucca, 351 U. S. 91; Mahler v. Eby, 264 U. S. 32). While the Order of Parole recites that application was made, the evidence is to the contrary. Appellants repeatedly denied such application was ever made, and insisted they were forced into the United States against their will (R. 24, 60). Moreover, the Parole Order was not explained to Appellant Fernandez, who signed it, and he could not read it because he was unable to understand English (R. 59, 60). None of this testimony was ever denied or challenged by the government. And since the appellants had no intention of deserting in the United States, their claims are entirely consistent with their prior conduct. This would therefore constitute an additional reason why appellants' detention is illegal.

2.

IN CONTEMPLATION OF LAW, APPELLANTS ARE IN MEXICO, AND ANY EFFORT BY RESPONDENTS TO EFFECT THEIR RETURN TO THEIR SHIPS WOULD VIOLATE MEXICAN SOVEREIGNTY, AND THEREFORE MUST FAIL FOR WANT OF JURISDICTION.

But whether or not their detention is valid, it is clear that appellants cannot be delivered to the Spanish authorities because they are not within the United States.

§212(d)(5) specifically states that the parole of aliens into the United States "shall not be regarded" as an entry. They are, as it were, outside the gates, knocking for admittance.

> Ekiu v. United States, 142 U.S. 651.
>
> United States ex rel Mezei v. Shaughnessy, 345 U.S. 206, 213.

Indeed, this Court has held that aliens in the legal posture of appellants are ineligible for discretionary relief under the physical persecution section of the Immigration (8 U.S.C.A. §1253(h)), for the precise reason that they are not within the United States. 44/

44/ If, on the other hand, the Attorney General has authority to surrender these appellants into Spanish hands, notwithstanding §212(d)(5), he is then under a correlative legal duty to entertain their claims for discretionary relief under §243(h) of the Immigration Act (8 U.S.C.A. §1253(h)). Quan v. Brownell (CADC), 26 L.W. 2025, dated July 16, 1957; NG Lin Chong v. McGrath (CADC), 202 Fed. 2d 316. This the Attorney General has not done, and therefore, in the event the Court fails to sustain the other of appellants' claims (continued)

Lew Sing v. Barber (CCA 9), 215 Fed. 2d 906; Cert. granted, 348 U.S. 910; judgment vacated, and petition ordered dismissed as moot, 350 U.S. 898.

Leng May Ma v. Barber (CCA 9), 241 Fed. 2d 85; cert. granted, #916, June 3, 1957 (17 CCH 8040).

Appellants had no such documents, so that to pull them into the United States via Article XXIV would place the 1902 Treaty in a status superior to that of the Federal law and Federal Constitution. Plainly, a treaty cannot have such effect.

See: Head Money Cases, 112 U.S. 580, 599.

More than that, however, Article XXIV cannot afford a jurisdictional basis for the surrender of appellants because their juridical persons are in Mexico. Since the 1902 Treaty is bilateral -- not multilateral -- their delivery to Spain would give the Treaty an extra-territorial effect. From the doctrine that the territory of a sovereign state is absolutely inviolable, [45] it is axiomatic that the legal reach of a treaty is confined to the

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44/ Continued: herein, an order of the Court enjoining delivery of appellants to their ships until he so exercises his discretion would be proper and serve the ends of justice. See: Mahler v. Eby, supra; United States v. Curran, supra.

45/ "The duty to respect the territorial supremacy of a foreign State must prevent a State from performing acts, which although they are according to its personal supremacy within its competence, would violate the territorial supremacy of this foreign State. A State must perform no acts of sovereignty in the territory of another State."

Oppenheim, International Law, Vol. I, p. 295.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

territory of the contracting nations.

In any event, the United States certainly cannot transgress the territorial sovereignty of a country with whom it is at peace, let alone do so as an agent of another nation. [46]

If the United States is entitled to assert extraterritorial rights in Mexico looking toward the return of a fugitive, it would only be by virtue of an extradition treaty with such country, or by comity.

See: Valentine v. United States, 299 U. S. 5, 9.

Such a treaty provides the exclusive mode for the recovery of a fugitive, and a demanding State lacks power to resort to other means to effect his capture.

Cook v. United States, 288 U. S. 102, 120-122.

United States v. Ferris, 19 Fed. 2d 925.

Collier v. Vaccaro, 51 Fed. 2d 17.

It so happens that an extradition treaty exists between Mexico and the United States which definitively establishes the procedures to be followed for the recovery of fugitives. [47]

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[46] In United States v. Curtis-Wright, 299 U. S. 304, the Supreme Court declared:

> "Neither the Constitution nor the Laws passed in pursuance of it have any force in foreign territory unless in respect of citizens of the United States, and operations of the nation in such territory must be governed by treaties, international understandings and compacts and the principles of International Law."

[47] Treaty of Extradition between the United States and Mexico, 31 Stat. 1818. Article III bars proceedings for crimes or offenses of a political character.

The record fails to reveal any effort by respondents -- or anyone else -- to utilize this treaty in reclaiming appellants.

But in the case at bar, the appellants, having been merely paroled from Mexico, are, as we have said, still subjects of Mexico. The latter country has granted them political asylum (R. 4), by virtue of which it has officially undertaken to protect appellants from persecution in Spain. For the United States to violate the terms of the parole would be tantamount to an act of transgression upon the territorial sovereignty of Mexico. 48/

> See: United States v. Rauscher, 119 U. S. 407, 419-421.

And for what? The District Court believed it was under a duty to order the return of appellants to their ships in order to maintain "the dignity of the Naval service of foreign nations and [to discourage] desertion by crew

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48/ "Oftentimes by process bearing no resemblance to extradition, the fugitive is returned to the country from which he has fled and is sought to be prosecuted criminally. Thus he may be abducted from foreign territory by agents of the State of prosecution. In such event the State whose territory has been invaded may demand the return of the individual."

Hyde, International Law, Chiefly as Interpreted and Applied in the United States, Vol. I, p. 581.

See also: Dickinson, Jurisdiction Following Seizure or Arrest in Violation of International Law, 27 Am. J. Int'l Law, 231, 244 (1933).

Garcia-Mora, International Law and Asylum as a Human Right, p. 153.

members". [49] While this is a laudable objective, it can be realized only within the limits permitted by International and Municipal Law.

In the final analysis, however, it was the respondents who chartered the course which now frustrates the exercise of their purported duty. In their haste to serve the interests of a ruthless dictator, the respondents have ignored appellants' plea for asylum; they have misused and abused their statutory authority; and they have disregarded the claims of a more compassionate neighbor. That respondents should have unwittingly left the door to Mexico ajar is all the more fortunate -- for conscience sake.

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[49] See Order Denying Petition, etc. (Clk. T. 39).

CONCLUSION

For the foregoing reasons, the Order of the District Court Denying the Petition for a Writ of Habeas Corpus and for Injunction, etc., should be reversed, with directions that said Court make an order for the return of appellants forthwith to Mexico.

Respectfully submitted,

A. L. WIRIN and

HUGH R. MANES

Counsel for Appellants.

APPENDIX "A"

Articles appearing in New York Times, 1946-1957, relating to conditions in Spain of which this Court is asked to take judicial notice:

A. FORM OF GOVERNMENT

1. Franco describes his 20 year rule as only way of combating Communism ... 7/9/57 - p. 16, col. 1.
2. Dissatisfaction with government widespread ... 1/21/56 - p. 1, col. 2; 5/31/57 - p. 1, col. 8.
3. Franco life tenure law - June-July, 1947, p. 1951, col. 2.
4. Franco's support of Axis revealed by State Dept. ... 10/8/50 - p. 43, col. 1.
5. Article on nature of Franco rule ... 8/20/50 - VI -p. 13.
6. Franco regime described by Congressmen and others as totalitarian ... 8/2/50 - p. 1, col. 3; 8/15/50 - p. 28, col. 6; 1/10/50 - p. 34, col. 3; 8/30/51 - p. 22, col. 1; 6/4/52 - p. 23, col. 1 (Eisenhower).
7. Political trials denounced ... 4/6/52 - p. 22, col. 3.
8. House Sub-Committee stresses arms aid does not imply approval of government ... 4/11/52 - p. 5, col. 1.

B. CENSORSHIP

1. Government bars two cultural magazines ... 1/28/56 - p. 2, col. 7.
2. Son of Count and printer tried for articles in Monarchist publication critical of Franco ... 7/19/53 - p. 4, col. 6.
3. French newsman expelled for alleged false reporting ... 11/22/53 - p. 13, col. 5.
4. N. Y. Times, and its writer, attacked in Falange newsorgan for critical articles ...

9/24/56 - p. 2, col. 5; 10/2/56 - p. 34, col. 7.

5. Brother of Spanish writer killed in reprisal for latter's attacks on regime ... 7/7/47 - p. 12, col. 3.
6. Attack by Falangists on N. Y. Times photographer ... 3/2/50 - p. 16, col. 1.
7. UNESCO books on Human Rights suppressed ... 10/22/51 - p. 16, col. 3.
8. Credentials of N. Y. Times correspondent revoked ... 4/18/52 - p. 24, col. 5. (Later reaccredited.)
9. Suppression of book offering gradual restoration of liberties under Constitutional Monarchy ... 11/23/52 - p. 25, col. 1.
10. Issues of N. Y. Times banned ... 11/21/52 - p. 7, col. 4; 11/28/52 - p. 15, col. 2.
11. Two religious magazines suppressed ... effort to curb separatism ... 7/8/52 - p. 30, col. 3; 7/9/52 - p. 22, col. 2; 7/12/52 - p. 32, col. 6.

C. SUPPRESSION OF POLITICAL ORGANIZATION - AND OF FREEDOM OF ASSOCIATION

1. Groups of alleged Communists held for political activity ... 5/14/57 - p. 4, col. 6.
2. Suppression by terror of pro-Monarchist and Christian Democratic groups ... 5/29/57 - p. 3, col. 4.
3. Arrest of alleged anarchists - top labor leaders on trial ... 1/8/53 - p. 14, col. 1.
4. Thirty-eight youths sentenced for organizing political party ... 3/19/53 - p. 10, col. 6.
5. Twelve members of clandestine Socialist Party seized in raids on meeting, one dies in jail ... 2/22/53 - p. 9, col. 2; 2/27/53 - p. 3, col. 5.
6. Eleven Socialists jailed for forming illegal party ... 11/26/53 - p. 14, col. 3.
7. Twenty-one convicted, and terms enlarged, for organizing Masonic Lodge, regarded as subversive ... 7/16/55 - p. 16, col. 7.
8. Thirty held for trying to organize Catalonian Communist Party ... 7/22/53 p. 13, col. 3.
9. Death sentence asked for men accused of maintaining relations with exiles ... 10/26/47 - p. 39, col. 4.

10. Government wars on underground press ... 8/24/47 - VI - p. 37, col. 2.
11. Twenty-four sentenced for Socialist Party membership ... 2/1/49 - p. 17, col. 1; others - 2/8/49 - p. 14, col. 6.
12. Official Falange paper, Arribe, charges Protestant Church backed by foreign aid funds, hints at disloyalty ... 4/22/50 - p. 3, col. 1; 7/19/50 - p. 2, col. 5.
13. Arrests of Monarchists ... 3/1/50 - p. 17, col. 1; 3/10/50 - p. 5, col. 5; 3/12/50 - p. 11, col. 1.
14. Military trial of twenty-seven for attempt to organize Socialist Party groups ... 7/3/52 - p. 6, col. 8; 7/4/52 - p. 5, col. 4; 7/5/50 - p. 2, col. 7; 7/8/52 - p. 12, col. 5.
15. Several members of Workers Party arrested ... 5/21/52 - p. 11, col. 2.

D. MAINTENANCE OF POWER BY FORCE AND TERROR

1. Disappearance of prominent anti-Franco exile ... 4/11/57 - p. 15, col. 1.
2. Students clash with police over cost of living protest ... 2/9/57 - p. 1, col. 8.
3. Student pickets attacked by Falangists ... 2/9/56 - p. 9, col. 3.
4. Nine executed for political activities ... 3/9/52 - p. 26, col. 3; five more - 3/13/52 - p. 10, col. 3; and five more - 3/15/52 - p. 4, col. 6.
5. Fourteen executions reported ... 8/29/47 - p. 10, col. 7.
6. Eighteen tried in Acoma for revolt ... 3/25/50 - p. 1, col. 2.
7. Four executed for "terrorism" ... 2/18/49 - p. 19, col. 4. See also: 2/22/49 - p. 7, col. 4.

E. SUPPRESSION OF SPEECH

1. Arrest of prominent anti-Franco leaders for "subversion" ... 7/1/57 - p. 2, col. 7.
2. Man held for remarks injurious to State ... 4/17/57 - p. 5, col. 1.

3. Thirty-three described as Communists as security threats ... 4/12/57 - p. 8, col. 4.
4. American bull fighter Whitney gets six year jail term for "insulting nation" ... 7/9/56 - p. 17, col. 2. (Later pardoned.)
5. Two tried by Military Court for conspiracy against Franco ... 2/10/53 - p. 4, col. 2.
6. U. S. tourist tried after being held 2-1/2 months for public criticism of Franco regime ... 5/26/55 - p. 8, col. 6.
7. Six Anarchists held for publishing anti-government bulletin ... 7/13/55 - p. 4, col. 8.
8. Ten Socialists sentenced to up to 15 years for anti-Franco acts ... 2/13/54 - p. 3, col. 7.
9. Student demonstration protesting cost of living broken up by police ... 2/8/57 - p. 6, col. 4.
10. Clandestine meeting of liberals and Monarchists ... 5/28/57 - p. 16, col. 5.
11. Executioning of alleged Communists notwithstanding intervention of Pope ... 12/20/47 - p. 3, col. 1.
12. Twelve sentenced for spreading anti-government propoganda ... 4/26/53 - p. 15, col. 4.
13. Man scheduled to die for anti-Franco speech in civil war ... 5/30/50 - p. 15, col. 4.

F. SUPPRESSION OF CIVIL RIGHTS AND LIBERTIES

1. Military tribunals condemn eleven for political activities - five others to prison ... 2/8/52 - p. 8, col. 4.
2. Military court orders death sentence for nine. Eighteen others to prison ... 2/13/52 - p. 2, col. 2.
3. Franco frees forty-five political prisoners conditionally ... 2/19/52 - p. 5, col. 4.
4. Government suspends right to move place of residence and protections against unlawful arrest in move to curb student rioting ... 2/11/56 - p. 1, col. 2.
5. Death penalty for plotting sabotage ... 5/7/47 - p. 11, col. 2.
6. Anti-Franco labor organizations labelled anarchist - leaders imprisoned 18 months without trial ... 2/6/54 - p. 4, col. 3.

7. Government announces 33,835 political prisoners - opponents say figure too low ... 7/9/50 - p. 32, col. 3.
8. Prodera Cortego and Tieruo Galvan freed ... 7/4/57 - p. 10, col. 5.
9. Government reveals political prisoners at 31,000 ... 10/25/51 - p. 12, col. 4.
10. Franco conditionally frees 113 ... 8/21/52 - p. 7, col. 5. Another 400 ... 8/28/51 - p. 5, col. 2.
11. Sulzberger reports most Franco foes classed as Communists - attacks violation of civil rights ... 11/30/48 - p. 12, col. 3.

G. POVERTY, INFLATION AND SUPPRESSION OF STRIKES AND PROTEST

1. Disappointment of youth with economic conditions noted ... 1/6/56 - p. 4, col. 3.
2. Execution of five trade unionists denounced ... 5/16/52 - p. 9, col. 1.
3. Sedition trial arising out of strikes ... 3/17/54 - p. 3, col. 3; 3/27/54 - p. 4, col. 3.
4. 2000 shipyard workers fired for striking against overtime pay cut - labor unrest reported ... 12/10/53 - p. 1, col. 7.
5. Report shows 83% of people account for one-third national income ... 7/7/53 - p. 18, col. 2.
6. Strike wave as prices rise ... 5/27/56 - IV - p. 4, col. 5.
7. Inflation rampant - 1/13/57 - p. 36, col. 1.
8. Cost of living up 25% in one year ... 1/28/57 - p. 31, col. 7.
9. Transportation boycott ends ... 2/10/57 - p. 67, col. 5.

H. PLIGHT OF POLITICAL REFUGEES

1. Amnesty law said to exclude Franco foes and political prisoners ... 8/3/47 - p. 32, col. 3.
2. Charge Lt. Col. Beneyto Sopena executed after return under amnesty offer ... 12/30/56 - IV - p. 6, col. 6.

3. Exiles' failure to take advantage of suspension of penalties for illegal entry cited ... 12/26/49 - p. 2, col. 7.

I. SEE ALSO: "THE ENCYCLOPEDIA AMERICANA, VOL. 12., ...

... wherein Franco is said to have declared after the Civil War that he was "responsible only to God and history".

J. SEE ALSO: "UNIVERSAL WORLD REFERENCE ENCYCLOPEDIA" ...

... depicting the career and some of the activities of Franco since 1939, as follows:

> "Franco made himself the head of a totalitarian Government. He was also premier, commander-in-chief of the armed forces, and head of the only political party allowed to function, the FALANGE PARTY. In World War II Franco gave all aid to Germany short of going to war."

K. SEE ALSO: H. L. MATTHEWS, "THE YOKE AND THE ARROW".

* * *

APPENDIX "B"

That the record at bar casts appellants in the role of political refugees, is dramatically revealed in these excerpts from their uncontroverted testimony:

MANUEL RODRIGUEZ:

> "[I left the ship] in order to ask political help [in Mexico]" (R. 9).
>
> "I was fleeing the Franco regime (R. 15) . . . . . . Because I am not in agreement with the regime or with the Laws of Spain and because I want a free country . . . and in Spain, there is no freedom to live for the man or his way of living" (R. 16).
>
> "Two [of my] brothers . . . died [in the Civil War] and one that is still alive . . . [is] in Chile . . . [because] fleeing from Spain, from Franco, from the regime" (R. 16, 17).
>
> "They made me join [The Falange] against my will . . . " (R. 18).
>
> "[I quit] because I wasn't in agreement with the principles of the Falange, and because they were the ones who killed my brother" (R. 18).
>
> " . . . I had to defend [Franco] and also to comply with all the Laws of Franco; and because if I did not do that, I would not be able to work . . . because I did not want to go to the classes of the Falange . . . they fired me" (R. 19).
>
> "As soon as the Franco regime came in, all the Spaniards who were left that belonged to the other side were put in jail and were shot.
>
> Then the people who were not willingly going to see those people being shot were called 'Reds' and they were beaten and they were also at times killed. These I have seen myself, with my father and my brothers" (R. 22, 23).

" . . . a few of us, the sailors, we talked about it and decided we wanted a free country . . . and then we would go away, we would escape" (R. 35).

GINAS JIMINEZ NORTES (MARTINEZ):

"Why did I go? Because I was fleeing from the regime of Franco" (R. 44).

" . . . we had no freedom [in Spain] and I was looking for a country where I could be free and I could do whatever my capacity and my reasoning decided for me" (R. 45).

" . . . when I went into the Institute [University] they made me enter the Falange, not because I wanted to but because of force" (R. 45).

" . . . I renounced the Falange, because I could not stand the regime that Franco gave us" (R. 46).

"[We had to take] an oath to support Franco, and . . . I did not want to give anything, because he did not give us freedom" (R. 47).

"During the War, my father didn't want to fight on Franco's side, so he was persecuted and they put him in jail several times" (R. 48).

"I do not know of any [other instances of political activity in Spain], because they do not allow us to speak of those things, and if they catch one of us they will put you in jail for four to six years" (R. 48-49).

"I wasn't thinking of deserting. I was thinking of leaving the Franco regime and go to a free country where a man could use his freedom" (R. 50).

" . . . I joined the Navy in Spain, because I understood that I could not work there and I wanted to live in a free country" (R. 53).

" . . . I went into [the Navy] as an office worker . . . but then in no time, saying I did not want the Franco regime, I was against it, I lost that job and then they gave me lower types of work" (R. 54).

> ". . . A man who is not free always looks for a country where he can be free . . . " (R. 54).
>
> "[If I am returned to Spain] the least I would get would be at least six years in jail, that is, if they would not shoot me, because on top of all the things we have said about [Franco] here which he deserves . . . so if I were to return to Spain now the most sure thing that they would do would be shoot me, because they would not be satisfied after my having said what I have said . . . " (R. 55).

ENRIQUE MEDINA FERNANDEZ:

> ". . . I wanted to go to Mexico (R. 59) . . . because I was looking for a free country where they would respect the rights of a citizen and where you could earn money and have the means to live as such, because in Spain a workman works very hard and he doesn't get enough money to live . . . " (R. 61).
>
> "Because of the fear that I have of returning to Spain of the things that we have said in Mexico . . . and the things we think, I would have a fear" (R. 61).
>
> "A fear that they would put us in jail or that they would kill us because of having spoken against the government" (R. 62).